



BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-861]

Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that imports of certain polyethylene terephthalate resin (PET resin) from India are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins of sales at LTFV are listed below in the section entitled “Final Determination Margins.”

DATES: *Effective Date:* [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2924 or (202) 482-0649.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2015, the Department published in the *Federal Register* the preliminary determination in the LTFV investigation of PET resin from India.<sup>1</sup> The events occurring since the *Preliminary Determination* was issued are addressed in detail in the Issues and Decision

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<sup>1</sup> See *Certain Polyethylene Terephthalate Resin From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 80 FR 62029 (October 15, 2015) (*Preliminary Determination*).

Memorandum.<sup>2</sup> The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. The Issues and Decision Memorandum is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination of this investigation is now March 4, 2016.<sup>3</sup>

#### Period of Investigation

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

#### Scope of the Investigation

The product covered by this investigation is certain PET resin from India. For a full description of the scope of the investigation, *see* Appendix I to this notice.

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<sup>2</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Determination of the Less-Than-Fair Value Investigation of Certain Polyethylene Terephthalate Resin (PET) Resin from India (Issues and Decision Memorandum)," dated concurrently with this notice.

<sup>3</sup> See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice, and which is hereby adopted by this notice.<sup>4</sup> A list of the issues raised and to which the Department responded is attached to this notice as Appendix II.

### Changes to the Margin Calculations Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to Ester's and Reliance's margin calculations in the *Preliminary Determination*. For a discussion of these changes, see the accompanying Issues and Decision Memorandum.

### Use of Facts Otherwise Available and AFA

In the preliminary determination, we stated that because the mandatory respondents Dhunseri Petrochem, Limited (Dhunseri) and JBF Industries, Limited (JBF) failed to respond to the Department's questionnaire, we preliminarily determined to apply facts otherwise available with an adverse inference to these respondents pursuant to sections 776(a) and (b) of the Act.<sup>5</sup> Pursuant to section 776 of the Act, the Department continues to find it appropriate to base Dhunseri and JBF's rate on AFA. In applying AFA, we are assigning Dhunseri and JBF the highest margin identified in the petition, 19.41 percent. *See* the Issues and Decision Memorandum at Comment 14.

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<sup>4</sup> *See* Issues and Decision Memorandum.

<sup>5</sup> *See* Memorandum from Christian Marsh to Paul Piquado, "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from India," dated October 6, 2015, at 14.

### Final Determination Margins

The Department determines that the following weighted-average dumping margins exist for the period January 1, 2014, through December 31, 2014:

Exporter or Producer	Weighted-Average Dumping Margin (percent)
Dhunseri Petrochem, Ltd.	19.41
Ester Industries, Ltd.	14.23
JBF Industries, Ltd.	19.41
Reliance Industries, Ltd.	8.03
All-Others	11.13

### All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. In this investigation, we calculated weighted-average dumping margins for mandatory respondents Ester and Reliance that are above de minimis and which are not based on section 776 of the Act. However, because there are only two relevant weighted-average dumping margins for this final determination, using a weighted-average of these two rates risks disclosure of business proprietary data. Therefore, the Department assigned a margin to the all-others rate companies based on the simple average of the two mandatory respondents’ rates,<sup>6</sup> less an adjustment for the export subsidies identified in the companion countervailing duty investigation.<sup>7</sup>

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<sup>6</sup> With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company’s publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See, Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was unavailable, we based the all-others rate on

## Disclosure

We will disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

## Final Affirmative Determination of Critical Circumstances

In the *Preliminary Determination*, the Department found that, based on respondents' reported shipment volumes, there was reason to believe or suspect that critical circumstances existed for imports of subject merchandise from India from Ester and Reliance. Furthermore, we drew an adverse inference with respect to Dhunseri and JBF, both of which are mandatory respondents that failed to respond to our requests for information, and thereby determined that critical circumstances existed with respect to them also. Finally, based on data from the ITC Dataweb, we found that there were critical circumstances with respect to those Indian shippers which were not selected for individual examination.<sup>8</sup> We received one comment on the Department's preliminary affirmative determination of critical circumstances, and have addressed the comment in the accompanying Issues and Decision Memorandum. It did not cause us to change our preliminary determination. Therefore, pursuant to section 735(a)(3) of the Act, we continue to determine that critical circumstances exist with respect to imports of PET resin from India from all parties.

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a simple average of the two calculated margins. See, e.g., *Large Power Transformers From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 9204 (February 16, 2012), unchanged in *Final Determination of Sales at Less Than Fair Value*, 77 FR 40857, 40858 (July 11, 2012).

<sup>7</sup> See section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. See *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>8</sup> See *Preliminary Determination*, 80 FR at 62030, and accompanying Preliminary Issues and Decision Memorandum at 18.

### Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of certain PET resin from India which were entered, or withdrawn from warehouse, for consumption on or after July 17, 2015, which is 90 days prior to the date of publication of the preliminary determination.

We also will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) the cash deposit rate for Dhunseri, Ester, JBF, and Reliance will be equal to the estimated weighted-average dumping margins determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the producer of the subject merchandise; and (3) the cash deposit rate for all other producers or exporters will be 11.13 percent.

Consistent with our practice,<sup>9</sup> where the product under investigation is also subject to a concurrent CVD investigation, we instruct CBP to require a cash deposit less the amount of the countervailing duty determined to constitute an export subsidy.<sup>10</sup> Therefore, in the event that a CVD order is issued and suspension of liquidation is resumed in the companion CVD investigation on PET resin from India, the Department will instruct CBP to require cash deposits adjusted for export subsidies, as appropriate, found in the final determination of the companion

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<sup>9</sup> The Department terminated the suspension of liquidation associated with the CVD investigation effective December 12, 2015. See CBP message no. 5348309 dated December 14, 2015. Therefore, until and unless suspension of liquidation is resumed, we will not adjust the antidumping cash deposit rate for collection of duties associated with export subsidies.

<sup>10</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413 (March 26, 2012).

CVD investigation. Specifically, for cash deposit purposes, we will subtract from the applicable cash deposit rate that portion of the CVD rate attributable to the export subsidies found in the final affirmative countervailing duty determination for each respondent (*i.e.*, 5.10 percent for Dhunseri, Ester, Reliance, and “all-others,” and 37.08 for JBF.)<sup>11</sup> After this adjustment, the resulting cash deposit rates will be 14.31 percent for Dhunseri, 9.13 percent for Ester, 2.93 percent for Reliance, 00.00 percent for JBF, and 6.03 for “all-others.”

These suspension of liquidation instructions will remain in effect until further notice.

#### International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our final determination. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine within 45 days whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

#### Return or Destruction of Proprietary Information

This notice will serve as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the

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<sup>11</sup> See the Memorandum to the File, through Robert James, Program Manager, Office VI, AD/CVD Operations, from Fred Baker, Analyst, Office VI, AD/CVD Operations, entitled, “Export Subsidies Calculated in the Countervailing Duty Final Determination of Certain Polyethylene Terephthalate Resin from India,” dated March 4, 2016.

destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

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Paul Piquado  
Assistant Secretary  
for Enforcement & Compliance

Dated: March 4, 2016.



## **Appendix I**

### **Scope of the Investigation**

The merchandise covered by this investigation is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process. The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

## Appendix II

### List of Topics in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigation
- V. Changes Since the Preliminary Determination
- VI. Use of Adverse Facts Available
- VII. Discussion of Interested Party Comments

- Comment 1: Whether Critical Circumstances Exist
- Comment 2: Whether Ester Should Be a Mandatory Respondent in This Investigation
- Comment 3: Whether the Department Should Recalculate Imputed Credit
- Comment 4: Whether the Department Should Recalculate Home Market Inland Freight
- Comment 5: Whether the Department Should Make a Duty Drawback Adjustment
- Comment 6: Whether to Adjust Ester's G&A Ratio
- Comment 7: Whether to Adjust Ester's Financial Expense Ratio
- Comment 8: Whether to Include Import Taxes in the Total Cost of Manufacture
- Comment 9: Whether to Rely on Ester's Revised Packing Costs
- Comment 10: Whether to Revise Reliance's COP Using Reliance's Verified Actual Chain Costs
- Comment 11: Whether the Department Should Use its Differential Pricing Analysis in the Final Determination
- Comment 12: Whether to Use Invoice Date as the Date of Sale in Both Markets
- Comment 13: Whether to Resort to Adverse Facts Available for Reliance
  - A. Whether Reliance Failed to Submit All Home Market Sales Subject to the Investigation
  - B. Whether Reliance Provided a Complete Home Market Sales Listing for Contract Customers
  - C. Whether Reliance Reported the Wrong Date as the Sale Date for U.S. Sales
  - D. Whether Reliance Wrongly Submitted a Claim for a Duty Drawback Adjustment
  - E. Whether Reliance Wrongly Submitted a Claim for an Adjustment for the Focus Product Scheme
  - F. Whether the Department Failed to Verify Export Warranty Expenses
  - G. Whether Reliance Incorrectly Included Third-Country Sales in its Home Market Sales Listing
  - H. Whether Reliance Incorrectly Included Free Samples in its Home Market Sales Listing
  - I. Whether Reliance Knowingly Withheld its U.S. and Home Market Short-Term Interest Rates
  - J. Whether Reliance Failed to Accurately Provide Its U.S. and Home Market Selling Functions
  - K. Whether Reliance Incorrectly Offset General and Administrative Expenses
  - L. Use of Total Adverse Facts Available
- Comment 14: Proper AFA Rate

### VIII. Recommendation

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